Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 87-263

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

THE PEOPLE OF THE STATE OF MICHIGAN
PETITIONER

v

BERNICE JOHNSON
RESPONDENT

REPLY BRIEF TO ANSWER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

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QUESTIONS PRESENTED

I.

UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION, MAY POLICE LAWFULLY PURSUE ONE FOR WHOM THEY HAVE AN ARREST WARRANT INTO THE DWELLING OF A THIRD PARTY?

II.

IS THE EXCLUSION OF EVIDENCE AN APPROPRIATE REMEDY UNDER THE FOURTH AMENDMENT WHERE THERE EXISTS NO TRUE CAUSAL NEXUS BETWEEN AN UNLAWFUL ENTRY AND THE SEIZURE OF EVIDENCE, AS WHERE POLICE, UNDER A GOOD FAITH MISAPPREHENSION OF THE LAW, MAKE A WARRANTLESS ENTRY INTO A DWELLING, SEE EVIDENCE IN PLAIN VIEW WHICH THEY COULD HAVE OBTAINED LEGITIMATELY BY PROCURING A SEARCH WARRANT, AND PROCEED TO OBTAIN A WARRANT BEFORE SEARCHING THE PREMISES?

III.

HAVE RECENT DEVELOPMENTS IN THE LAW OF CIVIL RIGHTS LIABILITY UNDERCUT THE DETERRENT RATIONALE FOR THE EXCLUSIONARY RULE ENOUGH TO JUSTIFY ITS ABOLITION AS A ROUTINE REMEDY FOR VIOLATIONS OF THE FOURTH AMENDMENT?

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ADDITIONAL REASONS FOR GRANTING THE WRIT

In his opposing brief, Respondent advances the claim that the police entry into her dwelling was, in some way, based upon a "pretext" of arresting the man whom they chased into the house, and chastises Petitioner for failing to address this point in the original petition. Though based upon dicta in the trial court's findings of fact, this claim is without any logical or factual basis, and Petitioner did not address the point in the Petition because it is both frivolous and untenable.

If the chase of Foster into the dwelling was indeed a pretext -- and the police fully intended to use the

warrant as a means to enter Respondent's house -- they had a perfectly legitimate means of effecting the entry: knowing that Foster would be arriving, police could have prepared the warrant ahead of time, radioed Foster's arrival, and entered the dwelling quite legally, without the need for the mad dash across the ice and snow that made their pursuit of Foster more akin to one found in the "Keystone Kops" than the "French Connection." Thus, we are confronted with an situation little recognized by the judiciary, but common enough in real life: if the facts were as the defendant insists, the police conduct would be unchallengeable, because the conscious intent she claims existed would have rendered their actions

well-planned and above reproach; but because real life is chaotic rather than planned, the scrambling and scampering which the record discloses eliminates the chance that the police actions were anything but spontaneous. Moreover, the entire question of "pretext" is -- and should be -- quite beside the point: properly put, the question should be whether the law allows the police to act as they did, not whether the record conclusively proves that their intentions reveal the purity of saints.

In any event, the judge ruling on the suppression motion found no merit to such claims of "pretext," and Respondent cannot claim that this Court should credit another judge's contrary opinion. Thus,

this Court may safely dismiss Respondent's claim of "pretext," and proceed to consider the more interesting issues presented in the Petition.

CONCLUSION

WHEREFORE, Petitioner prays that this Court grant plenary review, reverse the holding of the Michigan Court of Appeals, and remand the cause for proceedings consistent with this Court's opinion.

Respectfully submitted,

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JC/hdm